

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of) Case No.: **12-R-13996-LMA**
)
SUSAN JEANNE COFANO,)
) **DECISION**
)
Petitioner for Reinstatement.)
_____)

I. Introduction

Petitioner Susan Jeanne Cofano seeks to be reinstated as a member of the State Bar of California, following her 1997 resignation with disciplinary charges pending. She filed a petition for reinstatement to the practice of law on May 29, 2012. She was represented by attorney Samuel C. Bellicini of Fishkin & Slatter, LLP.

The Office of the Chief Trial Counsel of the State Bar of California, represented by Senior Trial Counsel Robin Brune and Suzan J. Anderson, filed an opposition to the petition on October 12, 2012, and a supplemental opposition on December 26, 2012.

Trial was held on February 4-6, 2013, and the matter was taken under submission on February 11, 2013.

For the reasons set forth below, petitioner has demonstrated, by clear and convincing evidence, that she has satisfied the requirements for reinstatement to the practice of law, including rehabilitation from the conduct that led to her resignation and possessing present learning and ability in the general law and the present moral qualifications. Therefore, this court

recommends that she be reinstated to the practice of law in California upon payment of all applicable fees and costs.

II. Findings of Fact

The following findings of fact are based on the parties' two stipulations, the petition, and the evidence and testimony admitted at this proceeding.

A. State Bar Membership

Petitioner was admitted to the practice of law in California on December 4, 1990, and was a member of the State Bar until her resignation with disciplinary charges pending was accepted by the Supreme Court in order No. S059254 (State Bar Court case No. 97-Q-10250) filed on March 3, 1997, and effective April 2, 1997.

B. Petitioner's Background and Conduct Leading to Resignation

Petitioner was a member of the State Bar for less than seven years when she resigned in 1997. During her short tenure as an attorney, petitioner's alcoholism caused her to commit multiple ethical violations, ultimately resulting in the Supreme Court's acceptance of her resignation with charges pending.

Petitioner opened her own law practice in 1993 and it quickly went downhill. She experienced anxiety over the demands of her law practice, the demands of being a new mother, and the uncertainty surrounding her marital relations, all coupled with her addiction to alcohol.

By December 1996, the State Bar had received at least 20 complaints against petitioner from her clients regarding her acceptance of legal fees without performing the promised services for which she was hired. In investigating these complaints, the State Bar learned that petitioner had been evicted from her office and that many client files were still located at her office.

On December 13, 1996, the State Bar applied for the assumption of jurisdiction over petitioner's law practice from the Riverside County Superior Court, case No. 092437, pursuant to

Business and Professions Code section 6190 et seq. The superior court granted the State Bar's application and made orders assuming jurisdiction over petitioner's law practice.

On January 15, 1997, petitioner signed her resignation from the State Bar with charges pending. She was placed on inactive enrollment on January 21, 1997, and was not eligible to practice.

On January 31, 1997, the superior court signed the permanent order assuming jurisdiction over petitioner's law practice. On March 16, 1998, the State Bar sought and obtained orders for the disposition of the unclaimed client files from her law practice. The court ordered the immediate destruction of all files for which a written authorization to destroy had been obtained and ordered the State Bar to retain all other undistributed client files until January 31, 2002, and then destroy any unclaimed files. Petitioner was represented by counsel regarding the disposition of the client files issue.

On March 3, 1997, the Supreme Court issued an order, effective April 2, 1997, accepting petitioner's resignation with charges pending and ordering petitioner to comply with the provisions of the California Rules of Court, former rule 955¹ ("former rule 955"), (the duties of disbarred, resigned or suspended attorneys).

At the time of petitioner's resignation, at least 55 parties had complained to the State Bar regarding their problems with petitioner after they had retained and paid her for legal services. Petitioner stipulated that she committed misconduct in 47 client matters in that she failed to perform services competently, improperly withdrew from employment, and failed to promptly refund unearned fees.

After she resigned from the State Bar, petitioner failed to update her membership records address with the State Bar. The Supreme Court mailed the March 3, 1997 Resignation Order and

¹ All references to former rule 955 refer to the current rule 9.20, which was amended and renumbered effective January 1, 2007.

the order to comply with former rule 955 to her official membership records address, which was the address that the State Bar assumed jurisdiction over in Southern California. However, in March 1997, petitioner had moved to Northern California and did not update her membership records address until April 1997.

By September 25, 2000, the Client Security Fund (“CSF”) had paid over \$35,000 to 47 of petitioner’s clients as refunds of unearned fees.

C. Petitioner’s Rehabilitation and Moral Character

In March 1997, petitioner moved to Northern California from Southern California and went to work for attorney Robert Powsner. She continued to drink. Several months later, petitioner became active in The Other Bar and was introduced to attorney Jerome Braun, who in turn, helped her get into Serenity Knolls, an alcohol recovery center. She sought treatment for her alcoholism at Serenity Knolls on August 3, 1997, and has been sober since August 4, 1997. She completed her program at Serenity Knolls and then sought aftercare treatment in an all women’s sober living home. She has remained sober ever since.

Petitioner continued to work and raise her two children as a single mother. She is active in her children’s lives and receives no financial assistance from their father. Moreover, she met other significant personal challenges, including a medical condition that required major maxilla-facial surgeries. She underwent several painful, major reconstructive facial surgeries.

Petitioner provided credible testimony regarding her recognition of her wrongdoing and her remorse and contrition for her conduct and the harm she caused her clients, her staff and the legal profession. Through her sober program and the support of family and community, petitioner has changed her life.

Petitioner continues to be committed to her sobriety. She remains active in Alcoholics Anonymous (“AA”) by sponsoring recovering women alcoholics and volunteering in their

teleservice program. She also volunteers with organizations such as Welcome Home Montrose (an organization that helps new veterans returning from service) and Telluride Adaptive Sports (an organization that helps disabled athletes).

In 2010, she left Powsner's office after 13 years and went to work at the Mayflower Center, an alcohol recovery center. She worked there until the Mayflower Center went out of business. Towards the end of her employment, petitioner worked without pay. She made sure that the Mayflower Center closed successfully and nothing was left abandoned.

She began to work for attorney Neil Bloomfield in 2011. Petitioner's duties at the Bloomfield Law Group include, among other things, editing and filing bankruptcy documents on behalf of Mr. Bloomfield.

Petitioner is sincerely remorseful for her past behavior and understands that she had abandoned her clients and disgraced the legal profession. She recognizes that for 17 years she had led a life of destruction due to alcoholism. She has now been clean and sober for over 15 years and has led a good, moral and upstanding life. She believes she will be an asset to the legal profession she once disgraced.

D. Character Witnesses

Nine character witnesses testified to petitioner's moral character in support of her reinstatement. They were aware of her resignation and the misconduct that led to it. They have known petitioner for many years and attested to her good moral character. They have had regular dealings with her, both personally and professionally. They testified favorably regarding petitioner's remorse for her conduct, honesty, integrity, trustworthiness, and legal knowledge and skills. The witnesses included four attorneys, who, as lawyers, are acutely aware of the ethical standards imposed upon the profession. Such evidence is entitled to considerable weight.

(Feinstein v. State Bar (1952) 39 Cal.2d 541, 547).

The court found all of petitioner's witnesses to be very credible.

1. Lori Brenseke

Lori Brenseke, petitioner's sister, testified that petitioner's soul is different now and she is a changed woman. Ms. Brenseke saw her sister drinking heavily, getting involved in abusive relationships and going through her painful facial surgeries. Now petitioner is stronger and independent. She is caring and wants to help people.

2. George Brenseke

George Brenseke, petitioner's brother-in-law, has known petitioner for 25 years. Although Mr. Brenseke had little direct exposure to petitioner's drinking, he remembers when she had a drinking problem and saw her stop drinking 15 years ago. They have a close bond now and he thinks she is now responsible, compassionate and caring with outstanding character.

3. Michael Neustadt

Michael Neustadt is the owner and Executive Director at Serenity Knolls. Mr. Neustadt remembers when petitioner sought treatment at Serenity Knolls. He testified that petitioner completed the highly structured Serenity Knolls program and attended aftercare program at a sober living home. Mr. Neustadt testified that petitioner continues to work with the recovery community.

4. Jerome Braun, Esq.

Jerome Braun, Esq., has been a California attorney since 1953 and is a law partner at Farella, Braun & Martel, LLP. Mr. Braun has known petitioner for approximately 15 years. They first met at The Other Bar and he helped her to get treatment at Serenity Knolls. Mr. Braun believes that petitioner is of good moral character and recommends her reinstatement. Mr. Braun is very impressed with petitioner's commitment to recovery and to the service of others. He believes that petitioner is very bright and honest.

5. Melanie Kline

Melanie Kline is the founder of Welcome Home Montrose, a non-profit organization in Montrose, Colorado, that serves young soldiers coming to Montrose after service. Ms. Kline met petitioner when petitioner moved to Montrose in November 2011. Ms. Kline testified that petitioner is an invaluable volunteer in Welcome Home Montrose. She helped Ms. Kline obtain nonprofit status for the organization under Internal Revenue Service Code section 501(c)(3). Petitioner opens up the offices and makes sure that the services of the organization are being delivered every day. Ms. Kline believes that petitioner is reliable, trustworthy, genuine and punctual.

6. Bryan B²

Bryan B is a certified alcohol and drug counselor and a board certified interventionist. Mr. B met petitioner in 1999 when she was working for Mr. Powsner. Mr. B testified that petitioner is a great mother who is constantly working on her recovery and helps other women in recovery. He hired petitioner in 2010 when he opened up the Mayflower Center to serve women. Mr. B testified that petitioner was invaluable to him when she was his employee. He described petitioner as one of the hardest working people he knows and she was instrumental in making sure that he closed down the Mayflower Center properly when it went out of business. Mr. B described petitioner as having a strong moral compass and that she takes her recovery very seriously.

7. Robert Powsner, Esq.

Robert Powsner, Esq., has been admitted to the State Bar since 1953 and is a sole practitioner. He employed petitioner as a secretary in 1997 and she worked for him for 13 years

² Membership in AA is confidential. To protect the confidentiality of Mr. B, the court will not identify him by his full name.

until 2010. Mr. Powsner was aware that petitioner was an attorney who resigned with charges pending because of her alcohol addiction. He also knew that petitioner's law office was taken over by the State Bar because she abandoned her law practice. Mr. Powsner described petitioner as one of the smartest persons he has ever met. He testified that petitioner was honest, hardworking, and very reliable.

8. Neil Bloomfield, Esq.

Neil Bloomfield, Esq., has been an attorney since 1972 and is currently the head of Bloomfield Law Group in San Rafael. Mr. Bloomfield hired petitioner in early 2011. Mr. Bloomfield became aware of petitioner's resignation from the State Bar when he hired her. He testified that petitioner is extremely hard working, honest and meticulous with her work. Petitioner plans to continue working for Mr. Bloomfield if reinstated.

9. Randall Lee Hornibrook, Esq.

Randall Lee Hornibrook, Esq., was admitted to the State Bar in 2007 and works as an attorney at the Bloomfield Law Group. He has known petitioner for two years since she started working there in 2011. Mr. Hornibrook testified to petitioner's honesty, excellent work ethics and great legal knowledge.

In sum, all of the witnesses expressed confidence in petitioner's rehabilitation and urged her reinstatement, stating that petitioner is remorseful and committed to sobriety. The witnesses praised petitioner's integrity and honesty.

The State Bar did not rebut any of the evidence submitted.

E. Present Ability and Learning in the Law

After her resignation from the State Bar, petitioner worked as a paralegal for 13 years with Mr. Powsner. Currently, she is working for Mr. Bloomfield. Both attorneys testified to her high competence and extreme intelligence.

Also, petitioner has passed the Multistate Professional Responsibility Examination (“MPRE”) in March 2012 and the Attorneys’ Examination administered by the Committee of Bar Examiners in July 2010.

F. California Rules of Court, Former Rule 955

On March 3, 1997, the Supreme Court, upon acceptance of petitioner’s resignation, ordered that petitioner comply with former rule 955. Petitioner was in the throes of alcohol abuse and failed to update her membership records address and did not receive the Supreme Court order. She was in the middle of moving to Northern California and did not update her membership records address until April 1997.

Upon preparing this petition for reinstatement, petitioner discovered that the Supreme Court had ordered her to comply with former rule 955 in 1997 and that she had not yet complied. She admitted that because she failed to update her address, the Supreme Court order was returned to the court as undeliverable.

Petitioner submitted a belated rule 9.20 affidavit on May 29, 2012, upon her counsel’s advice. On June 5, 2012, the rule 9.20 affidavit was rejected as untimely.

G. Restitution

Petitioner has reimbursed the CSF, plus interest and costs. She has also paid all discipline costs assessed against her.

In December 2012, after the State Bar took petitioner’s deposition, petitioner learned for the first time that there were other restitution claims that had not been paid in the sum of \$6,550. As of the signing of the second stipulation on February 8, 2013, petitioner has made complete restitution payments to the individual claimants.

III. Conclusions of Law and Discussion

A. California Rules of Court, Rule 9.10(f); Rule 5.445(A) of the Rules of Procedure of the State Bar

To be reinstated to the practice of law, an attorney who resigned with charges pending must establish by clear and convincing evidence that she: (1) has passed a professional responsibility examination within one year prior to filing the petition; (2) has been rehabilitated; (3) has the present moral qualifications for reinstatement; and (4) has the present ability and learning in the general law by providing proof that she has taken and passed the Attorneys' Examination by the Committee of Bar Examiners within three years prior to the filing of the petition. (Cal. Rules of Court, rule 9.10(f); Rules of Proc. of State Bar, rule 5.445(A).)

Petitioner bears the heavy burden of proving by clear and convincing evidence that she meets all of the requirements for readmission to the practice of law. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1091-1092; *Calaway v. State Bar* (1986) 41 Cal.3d 743, 745; *Tardiff v. State Bar* (1980) 27 Cal.3d 395, 403.) Although she need not demonstrate perfection, "overwhelming proof of reform" is necessary. (*Feinstein v. State Bar* (1952) 39 Cal.2d 541, 546; *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 315.)

The showing of rehabilitation needed is commensurate with the nature and seriousness of the underlying misconduct. (*In re Menna* (1995) 11 Cal.4th 975, 986; *Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1068-1069.) However, as the Supreme Court stated in *Resner v. State Bar* (1967) 67 Cal.2d 799, 811, "[t]he law looks with favor upon the regeneration of erring attorneys. . . ."

B. Multistate Professional Responsibility Exam

Petitioner passed the MPRE within one year prior to filing the petition. (Rules Proc. of State Bar, rule 5.445(A)(1).)

C. Rehabilitation

Lengthy Period of Exemplary Conduct

An applicant for reinstatement must show, by clear and convincing evidence, that he or she is successfully rehabilitated. Proof of that rehabilitation must include a lengthy period of unblemished and exemplary conduct. (*In re Menna, supra*, 11 Cal.4th at p. 989.)

However, “our concern . . . is not just in counting the correct number of years for measuring petitioner’s rehabilitation, but more importantly, to assess the quality of petitioner’s showing in light of [her] very serious misconduct.” (*In the Matter of Bodell* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 459, 464 [showing of rehabilitation sufficient during four years of unsupervised good conduct].)

Here, petitioner has demonstrated by clear and convincing evidence that she has turned her life around. The serious misconduct that resulted in petitioner’s resignation with charges pending occurred approximately 16 years ago and is attributable to petitioner’s alcohol abuse. She has shown a sustained commitment to her sobriety through her participation and volunteer work in AA and other chemical dependency treatment programs.

She is no longer the person she was at the time of the misconduct. She has been sober since 1997; she is committed to service of others; she is a dedicated mother; and she is no longer in unhealthy marital relationships.

A critical area of rehabilitation is the concrete showing of acts designed to rectify past wrongdoing. (*In re Menna, supra*, 11 Cal.4th at pp. 987-988.) Petitioner has devoted significant amounts of her time to working with newly sober women patients in recovery. Her work through AA in sponsoring recovering alcoholics and volunteering on the AA teleservice also shows her rehabilitation. “Postmisconduct pro bono work and community service are factors

evidencing rehabilitation and present moral qualifications.” (*In the Matter of Miller, supra*, 2 Cal. State Bar Ct. Rptr. at p. 430.)

This court concludes petitioner has clearly and convincingly demonstrated her rehabilitation from the circumstances that were once present in petitioner’s life at the time of her misconduct. Petitioner’s presentation of favorable character evidence, and evidence of remorse and acceptance of the responsibility for misconduct leading to her resignation are adequate to show sustained exemplary conduct and demonstrate moral reform. (*In the Matter of Kirwan* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 692.)

The evidence shows that petitioner has taken responsibility for her life and past misconduct, and she has resurrected herself into an honest, trustworthy and productive member of the community. (*In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423.) She has been forthright and honest in her description of her misconduct and has expressed sincere remorse for it. (*In the Matter of Rudman, supra*, 2 Cal. State Bar Ct. Rptr. at p. 554.) Petitioner has demonstrated an acceptable appreciation for her professional responsibilities and a proper attitude towards her misconduct. (*In the Matter of Miller, supra*, 2 Cal. State Bar Ct. Rptr. at p. 431.)

Petitioner’s rehabilitation is most compelling and impressive. Thus, she has conducted herself in an exemplary manner.

The State Bar did not present evidence sufficient to undercut the evidence presented in support of her reinstatement.

Noncompliance with Former Rule 955

Rule 9.20(d) provides that a disbarred or resigned member’s willful failure to comply with the provisions of rule 9.20 is a ground for denying her application for reinstatement.

Petitioner's belated attempt to comply with former rule 955 by filing an affidavit some 15 years later does not cure her of her violation. But this court finds that this factor alone should not bar her reinstatement. To find otherwise "would effectively foreclose petitioner from ever being readmitted regardless of the showing of rehabilitation otherwise made." (*Hippard v. State Bar*, *supra*, 49 Cal.3d at pp. 1096-1097.) Her former rule 955 violation occurred in 1997 and there is no evidence that the violation injured clients or impaired any disciplinary proceedings against her. At the time of her resignation, the court had assumed jurisdiction over her law practice. The State Bar had taken over her client matters and notified the clients. Thus, former rule 955's prophylactic function in ensuring that all concerned parties learn about an attorney's suspension from the practice of law was not compromised.

"Given the other strong evidence of rehabilitation, [the court finds] that noncompliance with rule 955 under these facts is not determinative of petitioner's rehabilitation." (*In the Matter of Salyer* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 816, 827.)

D. Moral Qualifications

As to moral qualifications, the question before the court is "whether petitioner is a fit and proper person to practice law at this time." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1051.) Petitioner has proven by clear and convincing evidence the requisite good moral character for reinstatement to the practice of law. She has demonstrated that she is fit to practice law in California.

Petitioner presented many credible character witnesses who attested to her high moral character. The character testimony is a strong consideration as factors supporting petitioner's reinstatement. Their opinion and knowledge of petitioner are that she is of good moral character and this court agrees.

Moreover, "[l]etters of recommendation and the favorable testimony, especially that of

employers and attorneys, are entitled to considerable weight. [Citations.]" (*Feinstein v. State Bar, supra*, 39 Cal.2d at p. 547.) Petitioner presented very credible evidence from four attorneys, including her employers, all of whom urged her reinstatement based on their assessment of her character and legal knowledge and skills.

Therefore, petitioner has demonstrated that she is fit to practice law in California in view of her lengthy period of sobriety and has proven by clear and convincing evidence the requisite good moral character for reinstatement to the practice of law.

E. Petitioner's Present Ability and Learning in the General Law

The un rebutted evidence supports a finding that petitioner has made a sufficient showing of present ability and learning in the general law required for reinstatement. (Rules Proc. of State Bar, rule 5.445(A)(4).) Petitioner has successfully taken and passed the Attorney's Examination by the Committee of Bar Examiners within three years prior to the filing of this petition.

Moreover, her duties and responsibilities as a paralegal demonstrate that petitioner possesses the required present learning and ability in the general law. In addition, her employers and other attorneys attest to her legal knowledge and ability in the general law.

IV. Recommendation

After careful consideration of the facts and the law, the court concludes that petitioner's reinstatement to the practice of law at this time is fully warranted. She has clearly provided a compelling demonstration of moral rehabilitation, comprising "overwhelming, proof of reform ... which we could with confidence lay before the world in justification of a judgment again installing [her] in the profession." (*In re Menna, supra*, 11 Cal.4th 975, 989.)

Petitioner has sustained her burden by clear and convincing evidence to demonstrate that she is rehabilitated and thus possesses the present moral qualifications and has met the other

requirements for reinstatement to the practice of law in California.

Accordingly, IT IS RECOMMENDED that the petition for reinstatement be **GRANTED** and that petitioner **SUSAN JEANNE COFANO** be reinstated to the practice of law in California upon payment of all applicable fees and costs.

Dated: May _____, 2013

LUCY ARMENDARIZ
Judge of the State Bar Court